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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 18—Original at Law.

THE STATE OF OHIO,

Plaintiff,

vs.

THE CHATTANOOGA BOILER AND TANK COMPANY, A TENNESSEE CORPORATION, CHATTANOOGA, TENNESSEE,

Defendant.

BRIEF ON BEHALF OF DEFENDANT.

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Defendant.

BRIEF ON BEHALF OF DEFENDANT.

STATEMENT OF FACTS.

We desire to direct attention briefly to certain facts which were omitted in the statement of the case by counsel for plaintiff.

Substantially all business of the defendant was transacted in the state of Tennessee where its plant for the

construction and manufacture of boilers and tanks was situated. These boilers and tanks were sold by the defendant to purchasers in Tennessee and other states.

The defendant has never had any office or place of business in the state of Ohio.

About September 2, 1926, defendant entered into a contract of employment in Chattanooga, Tennessee, with one William R. Tidwell. This contract provided and contemplated that the services to be performed by Tidwell were to be performed in the state of Tennessee and in other states when the installation of tanks and boilers became necessary. Tidwell was a rivet-heater. He was a citizen and resident of the state of Tennessee. After his death his widow became a resident and citizen of the state of Georgia.

Both the defendant and Tidwell had accepted the Workmen's Compensation Act of the state of Tennessee.

The Tennessee Act provides an elective system of workmen's compensation for industrial accidents. The preamble to the act recites that its purpose, among others, is,

> "to define and regulate the liability of employers to employees for injuries sustained by such employees in the course of their employment resulting in disability or death; * * * to prescribe a method for the execution of this act for the determination of liability of employers to employees for compensation, and to regulate the procedure in such cases;"

Section 2(b) of the act provides that,

> "Any reference herein to employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents or other persons to whom compensation may be payable under this act."

Section 3 of the act is as follows:

"That from and after the taking effect of this act, every employer and every employee, except as herein stated, shall be presumed to have accepted the provisions of this act, respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, unless he shall have given prior to any accident resulting in injury or death, notice to the contrary in the manner herein provided."

Section 8 of the act is as follows:

"That the rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death."

Section 11 of the act is as follows:

"That every employer who elects not to operate under this act as herein provided shall not, in any suit brought against him by an employee, who has elected to operate under the provisions of this act, to recover damages for personal injury or death arising from accident, be permitted to defend such suit upon any of the following grounds, namely:

(a) That the employee was negligent.

(b) That the injury was caused by the negligence of a fellow-servant or fellow-employee.

(c) That the employee had assumed the risk of the injury."

Section 14 of the act provides:

"That whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person

than the employer a legal liability to pay damages in respect thereto, the injured employee may at his option either claim compensation or proceed at law against such other person to recover damages, or proceed against both the employer and such other person, but he shall not be entitled to collect from both; and if compensation is awarded under this act the employer having paid the compensation or having become liable therefor, may collect, in his own name or in the name of the injured employee in a suit brought for the purpose, from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee."

Section 19 of the act provides:

"That when an accident happens while the employee is elsewhere than in this state, which would entitle him or his dependents to compensation had it happened in this state, the employee or his dependents shall be entitled to compensation under this act if the contract of employment was made in this state, unless otherwise expressly provided by said contract."

The contract for the sale of the tanks sold by the defendant to Ironton By-Products Coke Company of Ironton, Ohio, required the defendant to install and erect the tanks at the purchaser's plant in Ironton, Ohio.

The defendant did not comply with the Workmen's Compensation Act of Ohio either by becoming a subscriber to the state insurance fund or by electing to pay compensation direct to injured employees or to their dependents in case of death.

About five months after Tidwell's death his widow filed her application with the Industrial Commission of Ohio for compensation on the theory that the Ohio act was applicable.

The Ohio act makes more liberal provision in death cases than does the Tennessee act. Under the circumstances of this case the former allowed $4910.64, while the latter would have allowed approximately $2200.00.

Seven months later Mrs. Tidwell filed her application with the Tennessee commission for compensation under the Tennessee act. She also filed suit in the Circuit Court of Hamilton county at Chattanooga, Tennessee. In June, 1929, the Industrial Commission of Ohio made an award to Mrs. Tidwell in the total sum of $4910.64. The Ohio commission found that the defendant was an employer, as respects Tidwell, within the meaning of the Ohio Act and made an order directing it to pay the above amount to the Industrial Commission of Ohio. This the defendant has refused to do on the ground that the Ohio commission had no jurisdiction, power or authority to make an award which, under the circumstances of this case, was binding upon it.

The Ohio commission nevertheless paid the award to Mrs. Tidwell and this fact was certified to the attorney general of Ohio with instructions to institute suit against the defendant for reimbursement as provided by Section 1465-74 of the General Code of Ohio. Since the defendant had no officer or agent in Ohio upon whom summons could be served, no action could be brought there. An action was, however, begun by plaintiff in the United States District Court for the Eastern District of Tennessee, Southern Division, but that court dismissed the action for want of jurisdiction,—there being no diversity of citizenship.

brought the action, was a citizen and resident of New Hampshire. The action was brought in New Hampshire under the employers' liability part of the New Hampshire act. The defense of the employer there, as here, was that the rights of the parties were controlled by the laws of the state of the employment and of their residence.

1. The first distinguishing feature suggested by our opponents is that both the Vermont act and the New Hampshire act are elective, whereas here only the Tennessee act is elective,—the Ohio act being compulsory. It is argued that the elective system of workmen's compensation, when accepted by the employer and employee, creates a *contractural relationship*, whereas the compulsory system establishes a *status* between the employer and employee; that this difference is vital and renders the Clapper case valueless as a precedent for this case.

The cases in which this difference in the systems was first observed were those in which the constitutionality of the acts was challenged. The acts providing for elective systems were universally held to be constitutional, while in some instances the compulsory acts, notably the first New York Workmen's Compensation Act, were declared unconstitutional. Both types have been sustained as being a valid exercise of the state's police powers. Since that time this difference has been commented upon from time to time by the courts but usually in connection with a discussion of the extraterritorial effect of such acts. The author of the note in 3 A. L. R., 1351, summarizes the situation with this statement:

> "Compensation statutes may be divided into two general classes; those which are compulsory and those

> which are elective; but this fundamental distinction does not afford any guide in determining whether or not the statutes are to be considered as applying to injuries occurring outside of the state, since statutes of both classes have been construed to apply and not to apply to such injuries."

The Ohio act has been held to operate extraterritorially. Industrial Commission v. Gardinio, 119 O. S., 539, 164 N. E., 758. So has the Tennessee Act. Smith v. Van Nuy Interstate Co., 262 S. W., 1048.

Other differences between the Ohio act and the Tennessee act are of no consequence in determining the questions here presented. Failure to comply with the Ohio act exposes the employer to a common law action of negligence in which the defenses of fellow servant rule, assumption of risk or the defense of contributory negligence may not be interposed. Sec. 1465-73, General Code of Ohio. In addition to this the employee may apply to the Ohio commission and receive an award as though the employer had complied (Sec. 1465-74, General Code of Ohio), but the employer may resist the collection of the award by the commission in an action against him. State, ex rel., Kilgore v. Industrial Commission of Ohio, 123 O. S., 164; 174 N. E., 345. Likewise, under the Tennessee act the failure of the employer to accept the act deprives him of the defenses of assumption of risk, fellow servant's fault and contributory negligence. Sec. 11 of Chapter 123 of Acts of 1919, as amended by Chapter 84, Laws of 1923, and Chapter 40, Acts of 1927. Scott v. Nashville Bridge Co., 223 S. W., 844.

The election made by the administratrix in the Clapper

case was to sue in tort for damages. The same election was open to Mrs. Tidwell under the Ohio statute.

This court said in the Clapper case (page 157-8):

> "Workmen's compensation acts are treated almost universally as creating a *statutory relationship* between the parties." (Italics ours.)

But whether the relationship between the employer and employee be termed "contractual" or "statutory" or a "status," the fundamental purpose of both systems is identical.

Certainly the full faith and credit which the Federal Constitution requires Ohio to give to the public acts of Tennessee cannot be made to depend upon whether Ohio's act is compulsory or elective. No sound reason can be urged why, on this point, a different conclusion should be reached in this case from that reached in the Clapper case.

Opposing counsel suggest that had the New Hampshire act been a compulsory one the opposite conclusion would have been reached by this Court. We find nothing in the opinion to justify this assertion.

2. The second distinguishing feature suggested is that the Court indicated that the New Hampshire Act was only referable to residents of that state. We find no such indication in the opinion, but even if this were so, as much could be said of the Ohio act. Industrial Commission of Ohio v. Gardinio, *supra;* Industrial Commission v. Ware, 10 Ohio App., 375. This being true the Ohio Commission had no jurisdiction, power or authority to make the award it did. But even if the Ohio act were broader in this respect than the New Hampshire act it does not follow

that the protection given the defendant by the Tennessee act may be disregarded. The constitutional guarantee is as sacred in the one case as in the other.

The portion of the opinion to which opposing counsel doubtless refer, on this point, is found on pages 161-2. The court was here discussing the objection that to deny recovery would be obnoxious to the public policy of New Hampshire. In another part of their brief our opponents make the same argument. As an answer we may adapt the language on pages 161-2 of the opinion to the facts of this case.

> Moreover, there is no adequate basis for the conclusion that to deny recovery would be obnoxious to the public policy of Ohio. No decision of the state court has been cited indicating that recognition of the Tennessee statute would be regarded in Ohio as prejudicial to the interests of its citizens. In support of the contention that the provision of the Tennessee act is contrary to the Ohio policy, it is urged that Ohio's compensation law is a compulsory one which requires the employer to comply with it or be exposed to a common law action of negligence in which certain defenses are not available to him or to be liable for the payment of an award made by the Industrial Commission of Ohio on account of injury to or death of an employee. But the mere fact that the Tennessee legislation does not conform to that of Ohio does not establish that it would be obnoxious to the latter's public policy to give effect to the Tennessee statute in cases involving only the rights of residents of that state incident to the relation of employer or employee created there. Northern P. R. Co. v. Babcock, 154 U. S., 190, 198, 38 L. Ed., 958, 960, 14 S. Ct., 978. Nor does sufficient reason appear why it should be so regarded. The interest of Ohio was only casual. William Tidwell was not a resident there. He was not continuously employed there. He had no dependent

there. It is difficult to see how the state's interest would be subserved, under such circumstances, by burdening its courts with this litigation, or Ohio employers with increased premiums to the state insurance fund.

3. The third point of difference suggested by our opponents is that the employer in the Clapper case complied with the New Hampshire act, whereas the defendant in this case did not comply with the Ohio act. How this difference helps the plaintiff we are at a loss to understand. Indeed it was this fact that was most strongly urged by the administratrix in the Clapper case as the reason why the New Hampshire act applied and the Vermont act did not. It was this fact that led the Court of Appeals to sustain the judgment for the administratrix. The compliance with the New Hampshire act by the employer in the Clapper case carried with it an implication or implied acknowledgement that the New Hampshire act did apply, which is wholly lacking in this case.

There can be no question but that as to the Ohio workmen who were employed in Ohio the Ohio act did apply and had one of these been injured or killed the defendant would have paid the award made by the Ohio commission.

Mr. Justice Brandeis pointed out (page 162), that:

> "The circumstances under which the acceptance of the New Hampshire act was filed show that the company did not intend thereby to abandon its rights under the Vermont law in respect to Leon Clapper or other employees similarly situated."

It may here more appropriately be said that the failure of the defendant to comply with the Ohio act is not a cir-

cumstance showing that it intended to abandon its rights under the Tennessee act in respect to William Tidwell and the three other Tennessee workmen.

In this connection Mr. Justice Brandeis also said (page 163):

> "Its acceptance is to be construed as referable only to such New Hampshire employees and not as bringing under the New Hampshire act employees not otherwise subject to it."

Likewise it may be said that the provisions of the Ohio act, even when accepted, are to be construed as referable only to the Ohio employees and not as bringing under the Ohio act employees not otherwise subject to it.

4. The fourth distinguishing feature observed by opposing counsel is that the action in New Hampshire was an action for damages at common law rather than an action under the New Hampshire act. The opinion in the Clapper case (page 150), begins with this statement:

> "This action for damages was brought in a court of New Hampshire under the employers liability provisions of the Employers' Liability and Workmen's Compensation Act of that state, N. H. Public Laws, 1926, Chapter 302, to recover for the death of Leon J. Clapper, which the plaintiff claimed was due to his employer's negligence."

It is plain that the action taken in that case was authorized by the New Hampshire act. Likewise the action taken by Mrs. Tidwell in Ohio was authorized by the Ohio act and this action is brought also under authority of said act, Sec. 1465-74, General Code of Ohio. In the one case the tribunal through which relief was sought was the New

Hampshire court, while in the other it was through the Ohio Industrial Commission which was, in a sense, substituted for the court. All this, however, has to do with the remedy by which the rights and obligations of the parties are determined and not with the substantive rights of the parties with which we are here concerned. The action for damages in New Hampshire was as important to Mrs. Clapper as the proceedings before the Industrial Commission of Ohio were to Mrs. Tidwell. If the former did not afford a sufficient basis for permitting recovery no reason can be suggested why the latter should. Moreover, if the defendant could have been sued in Ohio and if Mrs. Tidwell had elected to bring suit against it there, as she might have, the two cases would have been identical in this respect. Certainly such procedural differences cannot operate to make the obligation of the defendant in this case greater than that of the defendant in the Clapper case.

5. The fifth point of difference suggested by opposing counsel is that under the Vermont act the employee and his dependents were bound by the exclusive remedy provisions of that law.

It is submitted that the provisions of the Tennessee act are no less broad in this respect than those of the Vermont act. The preamble of the act explicitly states that the purpose of the act is to "define and regulate the liability of employer to employee" and to prescribe a method for the "determination of liability of employer to employee."

Section 3 of the act provides:

> "That from and after the taking effect of this act, every employer and every employee, except as herein

stated, shall be presumed to have accepted the provision of this act, respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and *shall be bound thereby*, unless he shall have given prior to any accident resulting in injury or death, notice to the contrary in the manner herein provided." (Italics ours.)

Section 8 provides:

"That the *rights* and *remedies* herein granted to an employee subject to this act on account of personal injury or death by accident *shall exclude all other rights and remedies* of such employee, his personal representative, dependents or next of kin, at common law *or otherwise*, on account of such injury or death." (Italics ours.)

Section 14 provides:

"That whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may at his *option* either claim compensation or proceed at law against such other person to recover damages, or proceed against both the employer and such other person, *but he shall not be entitled to collect from both;* and if compensation is awarded under this act the employer having paid the compensation or having become liable therefor, may collect, in his own name or in the name of the injured employee in a suit brought for the purpose, from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee." (Italics ours.)

Section 19 provides:

"That when an accident happens while the employee is elsewhere than in this state, which would entitle

> him or his dependents to compensation had it happened in this state, the employee or his dependents shall be entitled to compensation under this act if the contract of employment was made in this state, unless otherwise expressly provided by said contract."

These sections are in pari materia and must be construed together. So construing them, it is clear that the purpose of the act is to define, regulate and determine the liability of employer to employee; that, having accepted the act they are bound thereby; the rights and remedies therein granted are exclusive of all other rights and remedies at common law or otherwise; that even as against third persons only one recovery may be had on account of one injury, and the provisions of the act apply to injuries or death occurring without as well as within Tennessee.

Again adopting the language of the opinion in the Clapper case (page 153):

> It clearly was the purpose of the Tennessee act to preclude any recovery by proceedings at common law or otherwise brought in another state for injuries received in the course of a Tennessee employment. The provisions of the act leave no room for construction. The statute declares in substance that when a workman is hired within the state, he shall be entitled to compensation thereunder for injuries received outside, as well as inside, the state, unless one of the parties elects to reject the provisions of the act. And it declares further that for such injuries the remedy under the statute shall exclude all other rights and remedies of the employee or his personal representative. If the accident had happened in Tennessee, the statute plainly would have precluded the bringing of an action for damages or otherwise. * * * The question is whether the fact that the injury occurred in Ohio leaves its Industrial Commission or its courts, or both,

> free to subject the employer to liability in tort or otherwise. That is, may the Industrial Commission of Ohio or the courts of Ohio disregard the relative rights of the parties as determined by the laws of Tennessee where they resided and made the contract of employment; or must they give effect to the Tennessee act, and to the agreement implied therefrom, that the only right of the employee against the employer, in case of injury, shall be the claim for compensation provided by the statute?

Further adapting the language of the opinion in respect to the giving, by Ohio, of full faith and credit to the public acts of Tennessee, as required by Art. 4, Sec. 1 of the Federal Constitution (page 156):

> But, obviously, the power of Tennessee to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries. It has power through its own tribunals to grant compensation to local employees, locally employed, for injuries received outside its borders * * * and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries. (157.) The existence of this power is not denied. * * * Workmen's Compensation Acts are (page 158) treated, almost universally, as creating a stautory relation, between the parties, * * *. The relation between William Tidwell and the company was created by the law of Tennessee; and as long as that relation persisted its incidents were properly subject to regulation there. For both Tidwell and the company were at all times residents of Tennessee; the company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into Ohio only for a temporary and specific purpose, in response to orders given him at the Tennessee office. The mere recognition by the tribunals of one state that parties by their conduct have subjected themselves to certain obligations aris-

ing under the laws of another state is not to be deemed an extraterritorial application of the law of the state creating the obligation. (Page 159.)

By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Tennessee, the Federal Constitution forbids the employee or his representative from asserting in Ohio rights which were denied him by the Tennessee act. A Tennessee court could have enjoined William Tidwell from suing the company in Ohio or from pressing his application for an award from the Industrial Commission of Ohio, thereby subjecting his employer to a claim for the amount of the award, just as it would have denied him such rights in Tennessee. * * * The rights created by the Tennessee act were entitled to like protection in Ohio and are entitled to like protection when set up by way of defense here. If this were not so, and the employee or his representative or the plaintiff were free to disregard the law of Tennessee and his contract, the effectiveness of the Tennessee act would be grossly impaired. For the purpose of that act, as of the Workmen's Compensation Laws of most other states, is to provide, in respect to persons residing and businesses located in the state, not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinate.

It follows that there is no such difference in the circumstances of the two cases as would warrant one rule in the Clapper case and an opposite rule in this case.

This, however, should be added. If the state of Ohio in its beneficence had undertaken to throw a protecting arm over the citizens of other states who might temporarily be within Ohio, by the allowance of compensation out of its state insurance fund, we suppose other citizens of such

states could not be heard to complain, so long as the state of Ohio, in so doing, did not attempt to penalize them by increasing the obligations fixed by the laws of such other states. However, we find nothing in the Ohio act which suggests that the burden to citizens of Ohio, which would thus result, was intended. The courts of Ohio have placed no such construction upon either its constitutional or statutory provisions on this subject. On the contrary, the decisions of the Ohio courts strongly indicate that the state insurance fund of Ohio is to be administered for the benefit of the citizens and residents of the state of Ohio. Industrial Commission v. Gardinio, *supra*, and Industrial Commission v. Ware, *supra*.

II.

Discussion of Tidwell v. Chattanooga Boiler & Tank Co., 163 Tenn., 420, 43 S. W. (2), 22.

It is argued that the fact that Mrs. Tidwell was denied recovery by the Supreme Court of Tennessee in the action brought in that state to recover under the provisions of the Tennessee act, and that the defendant was thereby relieved from paying under the Tennessee act, furnishes sufficient grounds for recovery by the plaintiff in this action. The history of the attempts by Mrs. Tidwell and the plaintiff to subject the defendant to payment of benefits totaling $7100, under both the Ohio and Tennessee acts, is ample justification for the defendant's action in contesting the right of Mrs. Tidwell to recover in the proceeding brought in Tennessee and the right of plaintiff to recover here.

The defendant properly insisted from the beginning that its liability was fixed and controlled by the Tennessee act. Mrs. Tidwell, however, first made claim with the Industrial Commission of Ohio, more than seven months before claim was filed under the Tennessee act. Although the defendant took the position that the Ohio commission had no jurisdiction, power or authority to make an award under the circumstances of the case which would be binding upon it, it could not be sure that its position would be upheld by the courts. It therefore was entirely within its rights in resisting payment under the Tennessee act because of the possibility of being obliged to pay the amount of the award made by the Ohio Commission which was being asserted by the state of Ohio and which resulted in the filing of a suit by the latter against the defendant in the United States District Court for the Eastern District of Tennessee, Southern Division.

The fact that the Supreme Court of Tennessee has since held that defendant was not liable under the Tennessee act does not operate to create a liability which did not theretofore exist.

Had the Ohio Commission declined to entertain the claim filed by Mrs. Tidwell on the ground that it had no jurisdiction and on the further ground that her rights were fixed by the Tennessee Act, neither this litigation nor the litigation in Tennessee would have been necessary.

There need be no confusion about the relationships of these parties and all this litigation. There is not now and there never has been any contractual or other relationship between the defendant and the plaintiff or its

tribunal known as the Industrial Commission of Ohio. It cannot properly be said that there is any privity between them. The plaintiff here was in no sense a party to, and had no interest in the outcome of, the action in Tennessee. That action was brought by Mrs. Tidwell on her own behalf and the plaintiff here would obviously have had no interest in any judgment which she might have obtained. Mrs. Tidwell is, of course, not a party to this action and has no interest whatever in the outcome. She has no rights here which may be affected and no interests which might in the slightest be prejudiced.

The defense here, therefore, cannot be made to depend upon the result of Mrs. Tidwell's action in Tennessee.

More especially is this true because the defendant's maximum liability under the Tennessee act was $2200, whereas the amount claimed by the state of Ohio is $4910.64. The fact that the defendant may be relieved from liability under both acts is a situation which has been brought about,—not by the defendant, which was willing to pay the amount required by the Tennessee act if it could have done so without further liability,—but by the acts of Mrs. Tidwell, on the one hand, in filing claims under both acts, and by the state of Ohio, on the other hand, in erroneously assuming jurisdiction and making an award under the Ohio act. It would be manifestly unjust and unfair thus to penalize the defendant for having pursued the only course which it could reasonably have been expected to take under the circumstances.

It is argued that the Supreme Court of Tennessee found that the Ohio commission had jurisdiction and that its

award to Mrs. Tidwell was proper. The decision in that case is not fairly susceptible of this interpretation. The court was not required to pass upon the jurisdiction of the Ohio commission. The *ratio decidendi* of the decision is that Mrs. Tidwell, by making application to the Ohio commission, renounced the contract under the Tennessee act and therefore was not entitled to any benefits thereunder.

The remarks made in the concluding paragraph of the opinion disclose some curiosity as to what the outcome of this action may be, but the court could not, of course, have given consideration to the questions here presented and frankly stated that it was not attempting to prejudge these questions.

III.

Equitable Contribution.

The argument of our opponents under this heading is significant. But the equities as well as the law are against them.

The defendant has never sought to avoid its just obligation in respect to Tidwell's death. It would willingly have paid the amount required under the Tennessee act if it could have done so without the risk of having to pay again. Mrs. Tidwell first made claim for an award under the Ohio act. The Ohio commission notified defendant of the filing of this claim and that it would look to defendant for payment if an award was made. Notwithstanding that she had been granted an award by the Ohio commission,

she pursued her claim against the defendant under the Tennessee act. The defendant has been subjected to litigation at the instance of the plaintiff and Mrs. Tidwell in several jurisdictions which have involved a maximum liability on its part of $7100.00. It could not, without subjecting itself to at least double liability, pay the amount required under the Tennessee act as long as Mrs. Tidwell was insisting upon her claim made with the Ohio Commission and as long as that commission was endeavoring to collect the amount of its award. The plaintiff has no equity on its side. By accepting jurisdiction of Mrs. Tidwell's claim and paying the award, plaintiff has compelled the defendant to resort to a defense of its rights in several jurisdictions at considerable expense.

Furthermore, this action is concededly brought by the plaintiff under Section 1465-74 of the General Code of Ohio, which only authorizes such action for recovery of the award made by the Industrial Commission of Ohio. An action for equitable contribution is nowhere authorized by the statutes of Ohio. The petition herein makes no claim for equitable contribution but is based solely upon the right of the plaintiff to maintain this action at law, under Section 1465-74 of the General Code of Ohio.

All of the cases cited by our opponents which have a direct bearing upon the precise question here involved were called to the attention of this court by briefs filed in the Clapper case. We therefore deem it unnecessary to enter into a discussion of them.

CONCLUSION.

We believe the decision in the Clapper case is decisive of this case. The fact that there has been some judicial recognition of a difference between workmen's compensation acts which are elective and those which are compulsory is of no importance in this case. The constitutional requirement of full faith and credit is not in the least affected by any supposed difference in the two systems.

The decision of the Supreme Court of Tennessee in the action brought by Mrs. Tidwell under the Tennessee act has no bearing upon the issues here involved.

If plaintiff were permitted to recover in this action the defendant would be penalized in the sum of $2710.64, being the difference between the amount allowed by the Tennessee act and the amount of the award made by the Ohio commission.

There is no basis for the application of the doctrine of equitable contribution. The equities are with the defendant rather than with the plaintiff. The former was willing to pay the benefits provided in the Tennessee act whereas the latter, by erroneously assuming jurisdiction and making the award and by its persistent efforts in litigation thereafter to collect from the former the amount of the award so made, has caused the defendant great inconvenience and substantial expense.

It is respectfully submitted that the petition should be dismissed at the costs of the plaintiff.

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